

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

NO. CR 19-243 JCC

**GOVERNMENT’S SENTENCING  
MEMORANDUM**

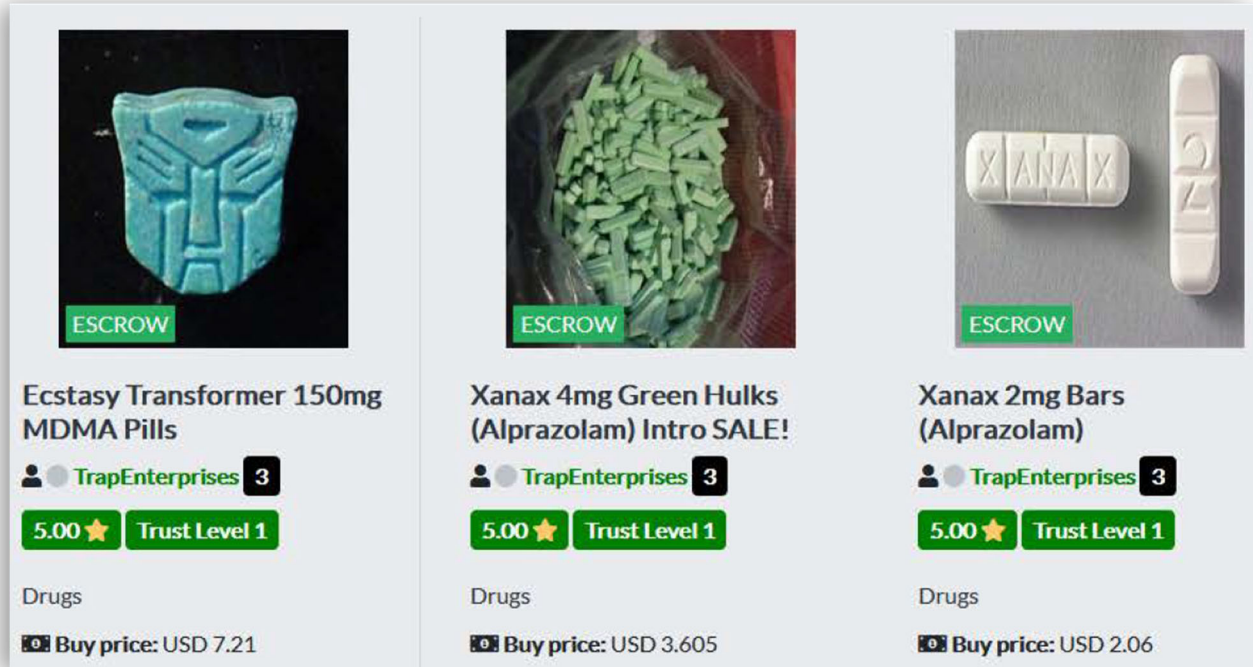
v.

NICHOLAS “NIKKI” ARMSTRONG,  
Defendant.

The United States of America, by Tessa M. Gorman, Acting United States Attorney, and Marie M. Dalton, Assistant United States Attorney for the Western District of Washington, respectfully submit this sentencing memorandum. This matter is set for a sentencing hearing on May 11, 2021, at 9:30 a.m. For the reasons that follow, the government recommends that the Defendant be sentenced to three years of probation, with the first six months to be spent in home confinement.

**I. FACTUAL BACKGROUND**

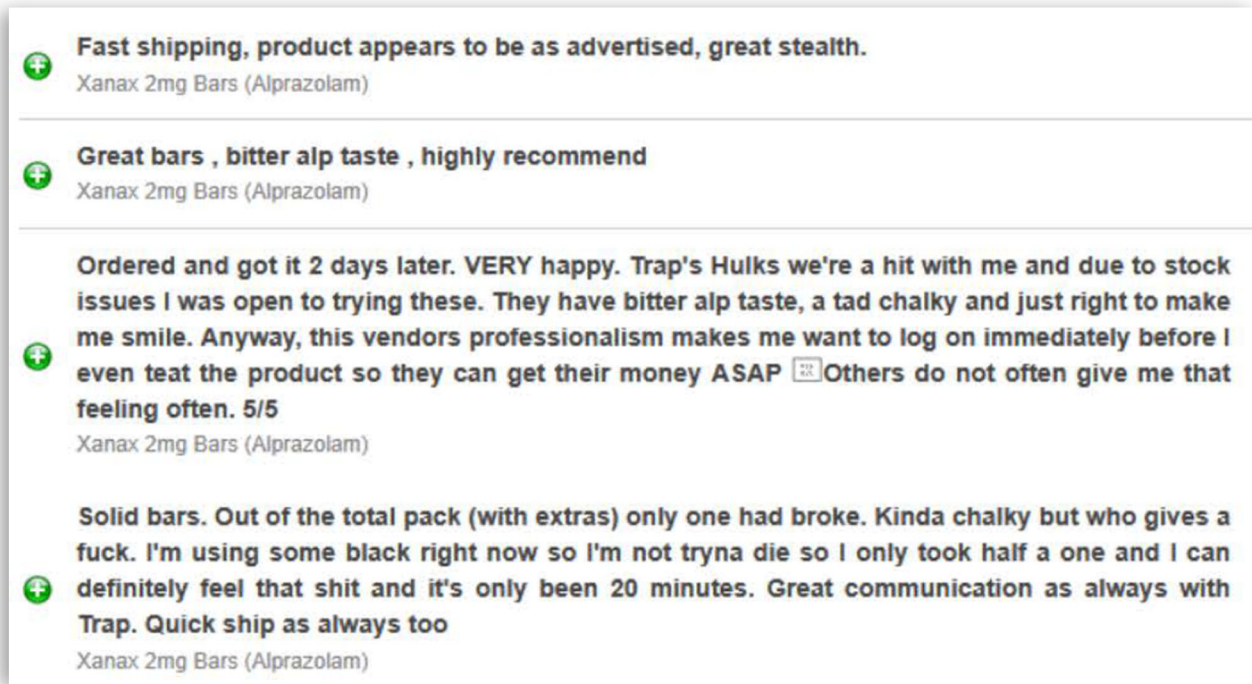
From at least June 2018 until her arrest in November 2019, the Defendant sold counterfeit Xanax, along with other products, on the dark web. Using the moniker “Trap Enterprises,” the Defendant sold these drugs on Wall St. Market, Empire Market, and Nightmare Market. On these marketplaces, the Defendant advertised Xanax bars, displaying pictures of pills imprinted with the word Xanax. For example, the following products were listed for sale on the Defendant’s Nightmare Market vendor page:



On these marketplaces, the Defendant sold pills advertised as Xanax to her customers, accepting cryptocurrency for payment. Once sold, the Defendant delivered these pills by shipping them through the mail. To conceal her identity, the Defendant used an online postage vendor, purchased postage in cryptocurrency, listed fake return addresses, and traveled to post packages in USPS blue boxes. In total, on the dark web, the Defendant sold more than 19,000 pills that were advertised as 2 mg Xanax bars, 1,500 pills that were advertised as 4 mg Xanax bars, and 25 pills that were advertised as 4 mg Xanax bars.

Although the Defendant advertised these pills as Xanax bars, the Defendant was, in fact, selling counterfeit pharmaceuticals. Instead of selling Xanax, the Defendant sold pills pressed from flualprazolam—a research chemical that is structurally similar to Xanax but includes the addition of a single fluorine atom. Because of this anatomical difference, flualprazolam falls outside the current list of prohibited benzodiazepines under the Controlled Substances Act. Despite this anatomical difference, as the

Defendant's dark web user reviews attest, flualprazolam and Xanax produce similar psychoactive effects. For example, the Defendant's vendor page on Empire Market contains the following reviews:<sup>1</sup>



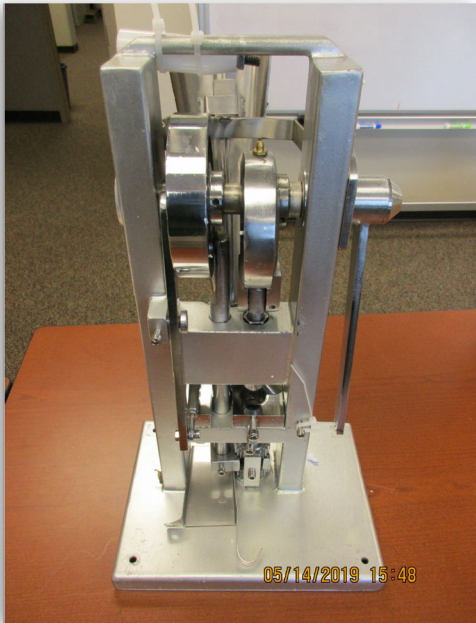
Because of its effects, flualprazolam abuse has become prevalent in recent years, which can lead to anxiolysis, amnesia, and potential respiratory depression.<sup>2</sup> Alarminglly, according to the Drug Enforcement Administration, abuse of flualprazolam can even lead to prolonged, severe sedation, including coma.<sup>3</sup>

To create these counterfeit pills, the Defendant used a pill press to ensure her products had the same attributes of Xanax bars, including their size, shape, and Xanax imprint. The following press and dies were recovered from the Defendant's residence:

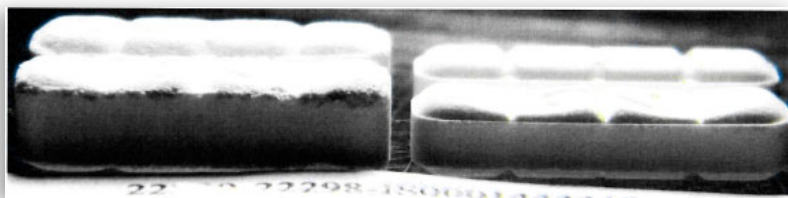
<sup>1</sup> The chemical name for Xanax is Alprazolam, referred to in the below reviews as "alp."

<sup>2</sup> Flualprazolam: New Psychoactive Substance Sends Six Oregon Teens to ER, PHYSICIANS WEEKLY, *available at* <https://www.physiciansweekly.com/flualprazolam-new-psychoactive-substance-sends-six-oregon-teens-to-er/>

<sup>3</sup> Flualprazolam, DRUG ENFORCEMENT ADMINISTRATION, *available at* [https://www.deadiversion.usdoj.gov/drug\\_chem\\_info/flualp.pdf](https://www.deadiversion.usdoj.gov/drug_chem_info/flualp.pdf)



Using this press, the Defendant created pills that strongly resemble those produced by Xanax. For example, in the photographs below, the counterfeit Xanax sold by the Defendant is depicted on the right, while the Xanax produced by Pfizer Pharmaceuticals is depicted on the left:





1 In addition to the Xanax pills sold online, at the time her residence was searched,  
 2 the Defendant possessed an additional 106.6 grams of flualprazolam powder that she  
 3 intended to press into Xanax bars and sell on the dark web. In total, the Defendant  
 4 earned, and if the powder were pressed would have earned, at least \$70,000 from selling  
 5 counterfeit Xanax.

## 6 **II. PLEA AGREEMENT**

7 On November 26, 2019, the Defendant pled guilty to three counts of Trafficking in  
 8 Counterfeit Drugs, in violation of 18 U.S.C. § 2320(a)(4). Pursuant to the terms of the  
 9 plea agreement, the United States agreed to recommend a sentence of twelve months and  
 10 one day. Defendant remains free to recommend any sentence she believes appropriate at  
 11 sentencing.

## 12 **III. GOVERNMENT'S SENTENCING RECOMMENDATION**

13 The government recommends that the Court sentence the Defendant to three  
 14 years' probation, with the first six months to be served in home confinement. The  
 15 government's recommendation appropriately addresses the factors set forth in Title 18,  
 16 United States Code, Section 3553(a), and satisfies the sentencing objectives therein.

### 17 **1. Nature and Circumstances of the Offense**

18 The Defendant sold over 20,000 counterfeit pills on the dark web, using the  
 19 trademark of a trusted pharmaceutical company and imprinted to resemble an FDA  
 20 regulated product. In reality, the Defendant was pressing an unknown, untested powder  
 21 that she purchased from an anonymous dark web vendor, selling these pills to  
 22 unsuspecting buyers. This powder could have been contaminated, laced with a dangerous  
 23 substance, or otherwise harmful to consume. As it was, the Defendant's pills contained  
 24 flualprazolam, a designer drug that is more potent than Xanax and has a relatively quick  
 25 onset of effects.<sup>4</sup> Ingesting flualprazolam depresses the central nervous system, causing  
 26

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27 <sup>4</sup> Emergency Controlled Substances Scheduling Action, State of Hawaii Department of Public Safety, *available at*  
 28 <https://dps.hawaii.gov/wp-content/uploads/2020/10/notice-of-emergency-Scheduling-Action-etizolam-and-flualprazolam-notice.pdf>

1 loss of coordination, drowsiness, dizziness, blurred vision, slurred speech, respiratory  
 2 depression, amnesia and, in some cases, death.<sup>5</sup> Between June and December 2019  
 3 alone, flualprazolam was associated with at least 44 postmortem and driving under the  
 4 influence of drugs death investigations in the United States.<sup>6</sup> Additionally, when  
 5 flualprazolam is combined with opioids, it contributes to increased overdose through  
 6 benzodiazepine-potentiated opioid-induced respiratory depression.<sup>7</sup> Because of these  
 7 effects, flualprazolam has been scheduled, on an emergency basis, as a controlled  
 8 substance in Hawaii, Louisiana, Virginia, Delaware, Wisconsin, and Oregon,<sup>8</sup> and was  
 9 added to Schedule IV of the United Nations Convention on Psychotropic Substances of  
 10 1971.<sup>9</sup>

11 Although flualprazolam has a similar chemical composition to Xanax, a controlled  
 12 substance, it does not fall within the current definitions of prohibited drugs outlined in the  
 13 Controlled Substances Act. By adding a single fluorine atom, those synthesizing and  
 14 selling this designer drug are able to evade federal regulations. Because the exact  
 15 chemical structure of the designer drug has not been banned, law enforcement has  
 16 difficulty curtailing the sale and abuse of synthetic benzodiazepines. Absent emergency  
 17 scheduling and targeted enforcement, these products flood dark web marketplaces and  
 18 fuel addiction amongst users.

19 Compounding these enforcement issues is the fact that these products are often  
 20 sold on dark web marketplaces. By their nature, these marketplaces allow both buyers  
 21

22 <sup>5</sup> Flualprazolam: Potent Benzodiazepine Identified Among Death and Impaired Driving Cases in the U.S., CENTER  
 23 FOR FORENSIC SCIENCE RESEARCH AND EDUCATION, *available at* [https://www.npsdiscovery.org/wp-](https://www.npsdiscovery.org/wp-content/uploads/2019/12/Public-Alert_Flualprazolam_NPS-Discovery_120519.pdf)  
 24 [content/uploads/2019/12/Public-Alert\\_Flualprazolam\\_NPS-Discovery\\_120519.pdf](https://www.npsdiscovery.org/wp-content/uploads/2019/12/Public-Alert_Flualprazolam_NPS-Discovery_120519.pdf).

25 <sup>6</sup> Emergency Controlled Substances Scheduling Action, State of Hawaii Department of Public Safety, *available at*  
 26 [https://dps.hawaii.gov/wp-content/uploads/2020/10/notice-of-emergency-Scheduling-Action-etizolam-and-](https://dps.hawaii.gov/wp-content/uploads/2020/10/notice-of-emergency-Scheduling-Action-etizolam-and-flualprazolam-notice.pdf)  
 27 [flualprazolam-notice.pdf](https://dps.hawaii.gov/wp-content/uploads/2020/10/notice-of-emergency-Scheduling-Action-etizolam-and-flualprazolam-notice.pdf)

28 <sup>7</sup> Controlled Substances Board, Wisconsin Department of Safety and Professional Services, *available at*  
<https://dps.wi.gov/Documents/BoardCouncils/CSB/20201009CSBFullPacketEditable.pdf>

<sup>8</sup> *Id.*; Emergency Controlled Substances Scheduling Action, State of Hawaii Department of Public Safety, *available at*  
[https://dps.hawaii.gov/wp-content/uploads/2020/10/notice-of-emergency-Scheduling-Action-etizolam-and-](https://dps.hawaii.gov/wp-content/uploads/2020/10/notice-of-emergency-Scheduling-Action-etizolam-and-flualprazolam-notice.pdf)  
[flualprazolam-notice.pdf](https://dps.hawaii.gov/wp-content/uploads/2020/10/notice-of-emergency-Scheduling-Action-etizolam-and-flualprazolam-notice.pdf)

<sup>9</sup> UNODC Early Warning Advisory of Psychoactive Substances, *available at*  
<https://www.unodc.org/LSS/Announcement?type=NPS>

1 and sellers to conceal their identities, using monikers rather than real names and  
 2 exchanging payments in cryptocurrency. The Defendant further concealed her identity  
 3 by using fake return addresses, purchasing postage from online vendors, and traveling  
 4 across town to drop packages in unmanned USPS blue boxes. She also used an encrypted  
 5 operating system and utilized additional obfuscating technologies to hide her identity  
 6 online. Secure in the relative anonymity afforded by her complex operations, the  
 7 Defendant sold her counterfeit products, distributing over 20,000 pills, and possessed  
 8 sufficient flualprazolam powder to produce tens of thousands of additional pills.

## 9 **2. History and Characteristics of the Defendant**

10 Despite the Defendant's longstanding presence on dark web marketplaces, selling  
 11 her counterfeit products over the course of sixteen months, the government is  
 12 recommending a probationary sentence because of the Defendant's substantial  
 13 cooperation. Upon arrest, the Defendant confessed to her offenses, aiding law  
 14 enforcement in the execution of their search warrant by leading them to her pill press,  
 15 flualprazolam powder, and other narcotics located in her residence. She also voluntarily  
 16 consented to abandon all interest in her cryptocurrency, then valued at approximately  
 17 \$2,500. Finally, she provided law enforcement with her account passwords, permitting  
 18 them to conduct undercover operations that led to the seizure of additional funds. The  
 19 Defendant has also performed well on supervision, suggesting that a custodial sentence  
 20 may not be necessary.

## 21 **3. Deterrence and Respect for the Law**

22 While the government believes a probationary sentence is appropriate, it believes  
 23 that the first six months of this sentence should be spent in home confinement. This  
 24 additional sanction is necessary because the Defendant committed the instant, and  
 25 longstanding, offenses while on supervision for another offense. Specifically, in October  
 26 2016, the Defendant was convicted of Possession with the Intent to Use Drug  
 27 Paraphernalia and sentenced to ten days in custody, followed by four years of probation.  
 28 Less than two years into her probationary term, the Defendant began selling counterfeit

1 Xanax and other products on the dark web. Additionally, during this probationary term,  
2 the Defendant committed other violations, including using marijuana, failing to attend  
3 drug and alcohol screenings, failing to report, and failing to pay fines and restitution.  
4 History has proven that a mere probationary sentence is inadequate to deter the  
5 Defendant from violating the law. Accordingly, merely imposing an additional  
6 probationary term seems to be an inadequate penalty. Instead, some greater sanction  
7 seems appropriate to ensure her future compliance.

8 This sanction seems particularly warranted because, upon arrest, the Defendant  
9 explained to law enforcement that she made a very calculated decision to sell counterfeit  
10 pills on the dark web. Specifically, she explained that she researched the United States  
11 Sentencing Guidelines and calculated her potential exposure at 0 to 20 months of  
12 imprisonment (which is not far off given that the actual guideline imprisonment range is  
13 18 to 24 months). The Defendant weighed this potential incarceration against the  
14 prospect of making tens of thousands of dollars by violating the law, and chose to sell  
15 counterfeit Xanax, even while on probation. Accordingly, in this case, it appears that an  
16 additional sanction is warranted to ensure that the Defendant understands the  
17 consequences of her actions and her calculus is altered in the future.

#### 18 IV. CONCLUSION

19 The Defendant's conduct in this case is indefensible—selling counterfeit, untested  
20 chemicals on the dark web, known to harm users when abused. The troubling nature of  
21 the Defendant's crimes are compounded by the fact that she committed them in a  
22 sophisticated manner—on the dark web using obfuscating technologies—while serving a  
23 probationary term imposed for possessing drug paraphernalia. Normally, faced with this  
24 set of facts, the government would recommend a term of incarceration, consistent with  
25 the United States Sentencing Guidelines. However, given the Defendant's substantial  
26 cooperation, and her performance on supervision, the government believes that a  
27 probationary term is adequate (albeit one that contains the additional sanction of home  
28



1 confinement). As a result, the government recommends that the Defendant be sentenced  
2 to three years of probation, with the first six months to be spent in home confinement.  
3

4 Respectfully submitted this 4<sup>th</sup> day of May, 2021.  
5

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7 Acting United States Attorney

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*United States v. Armstrong* - 10

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